IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 35245 of 2004(U)

AGAINST THE ORDER DATED / / IN EP 232 2002 IN OS.826/1997 of MUNSIFF COURT, PARAVUR

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PETITIONER:

PARAMU, S/O.RAMAN,
AGED 59 YEARS, KALATHIL HOUSE,
NJANGATTU PARAMBIL, PANAYIKULAM KARA,
ALANGADU VILLAGE, PARAVUR TALUK.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.SONIYA.M

RESPONDENT:

SASIDHARAN, S/O.KESAVAN,
THATTANPARAMBIL, ELOOR, KIZHAKKUMBAGOM MURI,
ELOOR VILLAGE, PARAVUR TALUK.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.35245/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PETITION IA. NO.3429/02 FILED BY THE PETITIONER BEFORE THE APPELLATE COURT.

EXT.P2:- COPY OF THE ORDER DT. 17.3.04 IN IA. NO.3429/02 IN AS. NO.126/02 PASSED BY THE PRL. SUB JUDGE, NORTH PARAVUR.

EXT.P3:- C.C. OF THE JUDGMENT DT. 17.3.04 IN AS. 126/02 ON THE FILE OF PRINCIPAL SUB COURT, PARAVOOR.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.35245 OF 2004

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Dated this the 29th day of November 2007

JUDGMENT

This writ petition is preferred against the order of the Prl.Sub Court, N.Paravur in I.A.No.3429 of 2002 in A.S.No.126/2002. It was an application filed along with the appeal to condone the delay of 301 days. It is submitted that the petitioner was aged 74 years at that time and was suffering from breathing and rheumatic problems and he was unable to move about and look after his own affairs. The court below found that no evidence has been adduced and therefore dismissed the application.

2. Learned counsel for the respondent would submit that delivery is over and everything is closed and this is only to harass the plaintiff. On the other hand, learned counsel for the petitioner would submit that if an opportunity is given, he will be able to prove his disability to file the appeal in time and it was by a mistake evidence was not let in. The broad principles of natural justice always demand that unless there is gross negligence and grave misconduct the matter should be heard on merits. I feel in the fitness of things to give an opportunity to the petitioner to adduce

evidence in the delay condonation application and for that purpose an opportunity can be given. It has caused unnecessary embarrassment to the other side and for that laches a cost has to be ordered.

Therefore, I set aside the order passed by the court below and remit back I.A.No.3429/2002 to the court below for fresh consideration and disposal after giving opportunity to both sides to adduce oral and documentary evidence in support of their contentions on condition that the writ petitioner makes a payment of Rs.1,500/-(rupees one thousand five hundred only) as costs to the plaintiff in the suit on or before 4.1.2008. Parties are directed to appear before the court below on 4.1.2008 and if no amount is paid on or before 4.1.2008, the opportunity given to the petitioner will stand cancelled and the delay petition need not be restored for consideration. Being an old matter, the court shall endeavour its best attention to dispose of the matter at the earliest. Since the appeal is disposed of as a consequential dismissal, if delay is condoned, it may be restored and disposed of in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-